

# **Exhibit 13 to Plaintiff's Response To Defendant's Motion for Summary Judgment**



DEPARTMENT OF TRANSPORTATION

HM 232

**DRIVER & CARGO**

**SECURITY POLICY**

September, 2003

Benton 083

***"We Do It Right The First Time"***

## **Department of Transportation**

**HM232**

### **Driver and Cargo Security Policy**

#### **Policy Statement**

Benton Express Inc. is dedicated to the safe and efficient handling and transporting of our customer's products. Our company is committed to ensuring the physical safety of all employees and reducing opportunities for cargo theft.

The goals of Benton Express Inc. are to: 1) ensure the safety of our drivers, and 2) ensure the security and integrity of our customer's products from point of origin to final destination.

#### **Policy Objectives**

The objectives of this Driver and Cargo Security Policy include the following:

- To clearly communicate general point-to-point security procedures and guidelines to all driving and non-driving personnel.
- To establish methods for protecting our drivers, vehicles, and customers' cargo while on the road.
- To establish consistent security guidelines and procedures for all responsible personnel.

#### **Administrative Duties**

Don Hammonds, Vice President, Safety and Human Resource Compliance, is responsible for administering our Driver and Cargo Security Policy. Don Hammonds, Vice President, Safety and Human Resource Compliance has full authority to make necessary decisions to ensure the success of this policy.

#### **Scope**

The following security guidelines and procedures apply to all work/load assignments. All drivers and non-driving personnel will be expected to be knowledgeable of, and adhere to, these guidelines and procedures when performing any load-related activity for Benton Express Inc.

## Procedures

### *Company-Assigned Security Devices*

All power units are issued a Quick Disconnect device in order to disable the vehicle when it is not in use. The following procedures are to be followed with regard to this device: 1) Make sure all equipment is disabled when not in use. 2) Protect trailers with freight by parking a disable tractor under them at night. 3) When drivers are away from their unit to make a delivery, all doors are to be locked. 4) Drivers at truck stops should remove the Quick Disconnect to disable the unit. 5) Drivers away from their unit while taking a meal break should remove the Quick Disconnect if unable to maintain visual contact at all times.

### *Point of Origin*

Drivers shall follow these procedures at the load's point of origin:

- Upon arrival at the load's point of origin, all drivers shall check in with the responsible shipping personnel to notify them of arrival and to provide proof of identity. While at the shipper, drivers shall follow the loading instructions and obey all customer plant safety and security rules.
- At the designated loading location (assigned dock door), the driver shall secure the vehicle. No Company vehicle will be left unattended until the driver is confident the vehicle is secure from moving.

### *Shipper Load and Count*

Shipper load and count applies when freight has been loaded when the Benton Express driver is not present. The bill of lading must be noted as "SL&C" if the driver is not given the opportunity to count the freight. If given the opportunity to look at the load, it will be the driver's responsibility to determine that the freight is loaded in such a way that damage will not occur and that the vehicle can be operated safely. In instances of full capacity loads, the driver is to be sure the trailer is sealed and the seal number is recorded on all copies of the bill of lading. Once the load is secure, the trailer door is to remain locked between stops, at all times when away from the vehicle and keys will be kept with the driver when the driver must leave the unit.

*In-Transit Security*

Drivers shall follow these procedures while in-transit:

- Dispatch shall make every effort to arrange delivery schedules (especially for high value loads) that minimize in-transit down time. In most cases, this means that dispatch will schedule loads for delivery as early as possible based on drivers' available hours and receivers' hours of operation.
- While in transit, drivers are prohibited from discussing information related to their load, route, or delivery schedule with any person(s) other than authorized company officials. Drivers failing to abide by this policy are subject to disciplinary action up to and including termination of employment. Drivers are to report any suspicious activity (including load-related inquiries from strangers) to their dispatcher or terminal manager.
- Drivers are expected to take all reasonable and responsible precautions to prevent damage to company vehicles and theft of cargo while in transit.
- For personal protection and safety, and the security of the cargo, drivers are expected to park in safe, well lit, designated truck parking locations only (such as reputable truck stops or high-traffic, major rest areas). When possible, loaded trailers should be parked against a wall, fence, or other stationary object to enhance cargo security.
- Drivers shall lock their vehicles at all times while in transit — especially during all time spent in urban areas.
- Drivers are prohibited from taking their equipment (loaded or empty) to or through home, or parking in any unsecured area. Drivers failing to abide by this policy are subject to disciplinary action up to and including termination of employment.
- Drivers are expected to maintain regular communications with the company while in transit. Any incident of drivers failing to check in when required shall be assumed to be suspicious and highly irregular. Immediate action shall be taken in such situations.
- Drivers are expected to fully understand this procedure and make every effort to maintain regular contact with dispatch.

*Hijacking and Cargo Theft*

Our company has adopted the following recommended procedures to deal with attempted hijacking or cargo theft:

- In the event of an attempted vehicle hijacking or cargo theft situation while the vehicle is in motion, Benton Express has adopted a NO STOP policy. Drivers who believe a hijacking is or may be in progress are instructed to keep the

vehicle moving as safely and responsibly as possible until the hijack attempt has ceased and/or the authorities have been notified. However, in any hijack situation, drivers should use their own good judgment (whether to stop or keep moving) based on the degree to which they feel their personal safety is at risk. Nothing our drivers do is worth getting hurt over.

- Drivers who do fall victim to vehicle hijackers or cargo thieves are instructed to notify local police as soon as possible.
- Once the proper authorities have been notified, drivers are required to contact company officials and follow all subsequent instructions.
- In the event of a hijacking, cargo theft or damage to a customer's product, a report is to be made immediately to the terminal manager of origin so that manager may inform the shipper of the problem.

#### *Terminal-to-Truck Communication*

##### *(City Operations)*

- All of Benton Express city tractors are equipped with technology that enables drivers and dispatchers to communicate with each other during business hours.
- Drivers are expected to use this technology to keep Benton Express informed and up-to-date with regard to their current status, and to alert Benton Express of any suspicions or unusual activities so appropriate action may be taken.
- This same technology enables Benton Express to track its equipment.
- Any incident of drivers failing to check in when required, or equipment showing unusual or unexpected deviations in planned routing, shall be assumed to be suspicious and highly irregular. Immediate action shall be taken in such situations.
- Drivers are expected to fully understand this procedure and make every effort to maintain regular contact with dispatch.

##### *(Road Operations)*

- Contact – David Justice – 1-800-207-5585 – This number is in effect 24 hours a day. As a back-up in case of an equipment failure you should contact Central Dispatch – 1-800-876-4201. In the event both of these numbers are unavailable, you should contact the closest Benton Express terminal to your location.
- Each driver is to carry a list of emergency contact numbers in their log book so that it is readily available.

*(Personnel Response to In-Transit Driver Communication)*

The following is the protocol for personnel response to driver emergency calls:

- Contact law enforcement.
- Contact closest terminal manager or supervisor.
- Contact Don Hammonds, Vice President, Safety & HR Compliance.
- Contact Regional Manager.

*Arriving at Stop-Off/Destination*

Drivers shall follow these procedures upon arriving at a stop-off or destination:

- Upon arrival at the destination or stop off, drivers shall check in with the responsible receiving person(s) to notify them of arrival, show proof of identity, and receive unloading instructions. Drivers shall follow receiver's and consignee's unloading instructions, and obey all customer plant safety and security rules.
- Once permission to unload has been given, the driver shall proceed to the unloading location (assigned receiving dock door) and secure the vehicle. No company vehicle shall be left unattended until the driver is satisfied that the vehicle is secure from moving.
- The driver, along with a responsible receiving employee, shall inspect the trailer seal(s), match the seal number(s) with those on the shipping papers, break the seal(s), open and secure the trailer doors, and inspect the cargo. Once both the driver and receiver are satisfied, the driver shall back the trailer and secure the vehicle.
- Drivers shall supervise the unloading process. In the event of cargo damage, overage, shortage, or any other discrepancy, drivers shall contact their dispatcher or terminal manager immediately for instructions and to report the cargo claim incident.
- After the unloading process has been completed, the driver shall get the appropriate paperwork signed by the responsible receiving employee.



# DRIVER TRAINING



## 49 CFR -- 177.816 -- DRIVER TRAINING

Driver Name \_\_\_\_\_ Date: \_\_\_\_\_

Instructed By: \_\_\_\_\_

### Pre-Trip Inspection -- FMCSR 396.11; 396.13

1. Drivers shall perform a pre-trip inspection. Before driving the driver shall be satisfied that the vehicle is in safe operating condition. Also, review the last report and sign the report if defects were noted. At the end of the trip, the driver shall perform a post-trip inspection and prepare a VCR being sure to note any defects. The VCR shall be turned in as instructed by the Terminal Manager.

The pre-trip inspection shall include the following:

#### Part 1: Pre-Trip Inspection and Emergency Equipment

- a. General condition of the unit.
  - b. Check for any leakage of coolants, fuel, and lubricants.
  - c. Under hood -- oil, water, general condition of engine compartment, steering
  - d. Around unit -- tires, lights, trailer hookup, brake and light lines, body, doors, horn, windshield wipers.
  - e. Test brake action, tractor protection valve, and parking (hand) brake.
  - f. Check horn, windshield wipers, mirrors, emergency equipment; reflectors, flares, fuses, tire chains (if necessary), fire extinguisher.
  - g. Check instruments for normal readings.
  - h. Check dashboard-warning lights for proper functioning.
  - i. Clean windshield, windows, mirrors, lights, and reflectors.
  - j. Review and sign previous report.
2. Use of vehicle controls and equipment, operation of emergency equipment and turning, braking, parking and handling.

#### Part 2: Coupling and Uncoupling

- a. Lines up units.
- b. Connects glad hands to trailer to apply trailer brakes before coupling.
- c. Couples without difficulty.
- d. Raises landing gear fully after coupling.
- e. Visually checks king pin assembly to be certain of proper coupling.
- f. Checks coupling by applying hand valve or tractor-protection valve (trailer air supply valve) and gently applying pressure by trying to pull away from trailer.
- g. Assure that surface will support trailer before uncoupling.

### Part 3: Placing Vehicle in Motion and Use of Controls

- 1) Engine
  - a. Places transmission in neutral before starting engine.
  - b. Starts engine without difficulty.
  - c. Allows proper warm-up.
  - d. Understands gauges on instrument panel.
  - e. Maintains proper engine speed (rpm) while driving.
  - f. Does not abuse motor.
- 2) Clutch and Transmission
  - a. Starts loaded unit smoothly.
  - b. Uses clutch properly.
  - c. Times gearshifts properly.
  - d. Shifts gears smoothly.
  - e. Uses proper gear sequence.
- 3) Brakes
  - a. Knows proper use of tractor protection valve.
  - b. Understands low air warning.
  - c. Tests service brakes
  - d. Builds full air pressure before moving.
- 4) Steering
  - a. Controls steering wheel.
  - b. Good driving posture and good grip on wheel.
- 5) Lights
  - a. Knows lighting regulations.
  - b. Uses proper headlight beam.
  - c. Dim lights when meeting or following other traffic.
  - d. Adjusts speed to range of headlights.
  - e. Proper use of auxiliary lights.

### Part 4: Backing and Parking

- 1) Backing
  - a. Gets out and checks before backing.
  - b. Looks back as well as uses mirror
  - c. Gets out and rechecks conditions on long back.
  - d. Avoids backing blind side
  - e. Signals when backing
  - f. Controls speed and direction properly while backing.

2) Parking (City)

- a. Does not hit nearby vehicles or stationary objects.
- b. Parks proper distance from curb.
- c. Sets parking brake, puts in gear, chocks wheels, and shuts off motor.
- d. Checks traffic conditions and signals when pulling out from parked position.
- e. Parks in legal and safe location.

3) Parking (Road)

- a. Parks off pavement.
- b. Avoids parking on soft shoulder.
- c. Uses emergency warning signals when required.
- d. Secures unit properly.

Part 5: Slowing and Stopping

- a. Uses gears properly ascending.
- b. Gears down properly descending.
- c. Stops and restarts without rolling back.
- d. Tests brakes before descending grades.
- e. Uses brakes properly on grades.
- f. Uses mirrors to check traffic to rear.
- g. Signals following traffic.
- h. Avoids sudden stops.
- i. Stops smoothly.
- j. Stops before crossing sidewalk when coming out of driveway or alley.
- k. Stops clear of pedestrian crosswalks.

Part 6: Operating in Traffic; Passing; Turning

1) Turning

- a. Signals intention to turn well in advance.
- b. Gets into proper lane well in advance of turn.
- c. Checks traffic conditions and turns only when intersection is clear.
- d. Restricts traffic from passing on right when preparing to complete right hand turn.
- e. Completes turn promptly and safely and does not impede other traffic.

2) Traffic Signs and Signals

- a. Approaches signal prepared to stop if necessary.
- b. Obeys traffic signals.
- c. Uses good judgment on yellow light
- d. Starts smoothly on green.
- e. Notices and heeds traffic signs.
- f. Obeys "STOP" signs.

3) Intersections

- a. Adjusts speed to permit stopping if necessary.
- b. Checks for cross traffic regardless of traffic controls.
- c. Yields right-of-way for safety.

4) Grade Crossings

- a. Adjusts speed to conditions.
- b. Makes safe stop, if required.
- c. Selects proper gear and does not shift gears while crossing.
- d. Knows and understands federal and state rules governing grade crossing.

~~5) Passing~~

- a. Passes with sufficient clear space ahead.
- b. Does not pass in unsafe location: hill, curve, intersection.
- c. Signals change of lanes.
- d. Warns driver being passes.
- e. Pulls out and back with certainty.
- f. Does not tailgate.
- g. Does not block traffic with slow pass.
- h. Allows enough room when returning to right lane.

6) Speed

- a. Speed consistent with basic ability.
- b. Adjusts speed properly to road, weather, traffic conditions, legal limits.
- c. Slows down for rough roads.
- d. Slows down in advance of curves, intersections, etc.
- e. Maintains consistent speed.

7) Courtesy and Safety

- a. Uses defensive driving techniques.
- b. Yields right-of-way for safety.
- c. Goes ahead when given right-of-way by others.
- d. Does not crowd other drivers or force way through traffic.
- e. Allows faster traffic to pass.
- f. Keeps right and in own lane.
- g. Uses horn only when necessary.
- h. Generally courteous and uses proper conduct.

Part 7: Miscellaneous

1) General Driving Ability and Habits

- a. Consistently alert and attentive.
- b. Adjusts driving to meet changing conditions.
- c. Performs routine functions without taking eyes from road.
- d. Checks instruments regularly while driving.
- e. Willing to take instructions and suggestions.
- f. Adequate self-confidence in driving.
- g. Is not easily angered.
- h. Positive attitude
- i. Good appearance, manner, cleanliness.
- j. Good physical stamina.

2) Handling of Freight

- a. Checks freight properly
- b. Handles and loads freight properly
- c. Handles bills properly
- d. Breaks down loads as required.

3) Rules and Regulations

- a. Knowledge of company rules
- b. Knowledge of regulations: federal, state, local.
- c. Knowledge of special truck routes.

**Procedures, Regulations and Policy – Tunnels, Bridges and Railroad Crossings**

Bridges & Tunnels – These areas require additional precautions. Your cargo, even your vehicle, can be very dangerous in these locations. Some criminals are not into cargo or vehicle theft for the money. As we have seen in recent years, their goal is much more sinister. It is the goal of terrorism. When using a vehicle or its cargo as a weapon, buildings, bridges, tunnels, dams and even people become potential targets for destruction.

When hauling hazardous materials, you should make every effort to avoid bridges and tunnels and also populated areas whenever possible. You should consult with your dispatcher about the possibility of alternative routes. Be sure to follow all federal, state and local rules regardless of the route you must take.

Railroad Crossings – When transporting hazardous materials, FMCSR 392.10 states that you must come to a complete STOP within 50 feet of and not closer than 15 feet to the track. Do not change gears until you have cleared the track.

**Procedures for Vehicle Attendance, Parking, Routing, Incident Reporting, Smoking**

Attendance and Parking – Benton Express, Inc. does not transport Div. 1.1, 1.2 or 1.3 explosives. Therefore, FMCSR 397.5 does not apply. However, company policy directs that you do not park within five feet of the traveled portion of the roadway.

The company Security Measures policy outlines procedures for disabling your unit by means of the Quick Disconnect device.

Routing – Benton Express, Inc. operates primarily of pre-set routes established by Operations. These routes consist mostly of turn runs. Because Benton Express, Inc. hauls no radioactive materials special routing instructions do not apply.

Incident Reporting – Procedures for reporting are within the Security Policy and all drivers have received those instructions.

Smoking – Benton Express, Inc. is a smoke-free corporation in all states, all buildings, all properties, and all equipment. When off of Benton Express property and out of the unit, FMCSR 397.13 applies. No person may smoke or carry a lighted cigarette, cigar or pipe on or within 25 feet of a vehicle containing the following classes of hazardous materials:

- Class 1 Division 2.1
- Class 3 Division 4.1
- Class 5 Division 4.2

**Procedures for Loading and Unloading**

Segregation of cargo in a mixed load – All employees are trained under 49CFR 172.704 and according to the Benton Express, Inc. Hazardous Materials Training Manual.

Handling and Load Securement –

Shipper's Load and Count (SL&C): Applies when freight has been loaded without the presence of a Benton employee. Always note the bill of lading as "SL&C" if you are not given the opportunity to count the freight.

If you are given the opportunity to look at a load that has been loaded by the shipper, it is your responsibility to determine if:

- 1) it is loaded in such a way that damage will not occur, and
- 2) the vehicle can be operated safely.

In instances of full capacity loads, be sure the trailer is sealed and the seal number is recorded on all copies of the bill of lading.

When you have the freight:

- 1) load it in such a manner that it will not become damaged during the remainder of your route.

- 2) keep the doors of the trailer locked between stops and at all times when you away from your vehicle.
- 3) pull you keys if you must leave your unit.

#### Unloading the Unit -

Turn in all bills of lading to your supervisor.

When the loading copy is returned to you, load the freight either to the proper unit or bay area then mark the loading document with the trailer number or the bay area where freight is placed.

Always use the proper tool for the job.

Keep the shipment together, whether docked or loaded.

As you unload the pickup unit, check freight to be sure it is properly marked and in agreement with markings on the bill of lading.

Record any discrepancy such as damage, shortage, or overage on the document you are using to unload the unit and report the discrepancy to your supervisor.

Freight in excess of billing or without a bill will not be loaded out. Place in "OS&D" bay with a properly completed "No Bill" slip.

#### Loading Road Trailers -

Be sure all trailers are free of dirt, nails, debris and leaks.

Be selective in what you use as floor freight and top freight, using either cardboard or wood dunnage to separate rough freight and cartoned freight.

Remember that no matter how heavy or large a piece of freight is, it will move. ALL freight must be blocked.

Most damage occurs in the rear ten feet of the trailer because:

- 1) this is where you get the roughest ride, and
- 2) loads are not properly tapered down to ride when the unit is closed out.

YOU are responsible for the shipment you put on the road trailer. Once it is loaded, put your initials on the loading document. After initialing, place the loading document in the proper designated place and record the shipment on the trailer loading card attached to the trailer wall.

#### Loading for City Delivery/Transfer Loading to Another Terminal -

When loading inbound shipments to delivery unit, dock, or to a trailer destined to another terminal, be sure to:

- 1) keep bill and freight together
- 2) check markings prior to loading it
- 3) indicate your disposition on the document and the number of pieces loaded to the dock, city unit, or road trailer.

When loading city delivery units, always consider the possibility that quick stops might be necessary and properly block and stack freight.



### Dock Pickups -

In the past, we have had people come to the dock, identify themselves as being a certain individual, accept the freight and leave. Later we find out the person who took the freight was not the consignee.

If you have freight that is picked up at the dock by the consignee and it is a person you do not recognize as one of your regular customers, then the following procedures are to be followed:

- 1) Request a driver's license for verification purposes. Write driver's license number on the back of the delivery receipt.
  - 2) Get the vehicle tag number or vehicle ID numbers and write it on the back of the delivery receipt.
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### **CONCLUSION**

Every year, some 12 billion dollars of cargo are stolen. To make matters worse, the potential for physical harm is a very real danger as many drivers have been harmed by those with malicious intent. It is a hard fact, but your job gets more dangerous each day.

The odds are still in your favor. Most drivers will not encounter these worst case scenarios. That does not mean you can let your guard down. When you become complacent is when you are most at risk. The key to your security and that of your vehicle and load is to always be alert. Day or night, on the move or stopped to rest, you have to stay aware and observant.

As a hazmat driver, you have to be extra careful. Your load is not only valuable in financial terms, but it also comes with potential hazards far greater than that of general freight. By following the regulations, company policies and procedures, and observing sound security practices, you are helping to ensure the safety of your cargo, your vehicle, yourself and others.

From pick-up to drop-off ...

Stay Alert!



**TRAINING AND SECURITY TEST**

Name: \_\_\_\_\_ Terminal: \_\_\_\_\_

Position: \_\_\_\_\_ Date: \_\_\_\_\_

1. Drivers, according to the HMR:

- a. Need only the training for drivers.
- b. Need only the training for hazmat employees.
- c. Need both the training for drivers and for hazmat employees.
- d. None of the above.

2. Which of the following is true concerning your quick disconnect device?

- a. Disables equipment when not in use.
- b. Protects loaded trailers by parking a disabled tractor under them.
- c. While away from the unit during a meal break, drivers should remove the quick disconnect.
- d. All of the above.

3. Training requirements specified for drivers include:

- a. Applicable requirements of the FMCSR.
- b. The procedures necessary for the safe operation of a motor vehicle.
- c. Application of the security program.
- d. All of the above.

4. Driver training:

- a. Must include the pre-trip safety inspection.
- b. Must include vehicle controls and equipment.
- c. Must include the post trip inspection.
- d. All of the above.

5. What must you do when you have a "SL&C"
- a. Make sure the trailer has a seal.
  - b. Record the seal number on the bill of lading.
  - c. Advise the shipper that you are not responsible because you did not see the freight loaded.
  - d. A and B.
  - e. All of the above.
6. While in transit, drivers are prohibited from discussing information related to their route, load and delivery schedule.
- a. True.
  - b. False.
- 
7. How often are P&D drivers required to call in to their terminal/dispatcher?
- a. Every half-hour.
  - b. Every two hours.
  - c. Every hour.
  - d. Twice a day.
8. Do you understand the "No Stop Rule"?
- a. Yes.
  - b. No.
9. Do you understand the procedure upon arrival at the consignee's receiving area?
- a. Yes.
  - b. No.
10. Do you understand the procedure upon arrival at your point of origin?
- a. Yes.
  - b. No.

I have been instructed on the Security Policy and Driver Training. I fully understand the requirements of this policy and training as it pertains to the performance of my duties as an employee for Benton Express, Inc. I agree to comply with these requirements.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

